

Claimant alleges the ALJ erred in denying the payment of medical bills or the providing of medical treatment for the injuries suffered during claimant's employment with

respondent beginning February 7, 2003, and continuing. Claimant had been provided medical care, with both John G. Yost, Jr., M.D., and Paul S. Stein, M.D., determining that claimant was not in need of medical care. Only orthopedic surgeon Edward J. Prostic, M.D., determined that claimant would benefit from strengthening exercises.

In workers compensation litigation, not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accident?
4. Are there any defenses which go to the compensability of the claim?¹

Additionally, the Board may review those preliminary hearing orders where it is alleged that a judge has exceeded his or her jurisdiction or authority in granting or denying benefits.²

Claimant's entitlement to ongoing medical treatment or the payment of medical bills are not issues over which the Board takes jurisdiction on appeal from preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the May 6, 2005 preliminary hearing Order of Administrative Law Judge Thomas Klein remains in full force and effect and the appeal of the claimant in this matter is hereby dismissed.

¹ K.S.A. 44-534a(a)(2).

² K.S.A. 2002 Supp. 44-551.

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

IT IS SO ORDERED.

Dated this ____ day of August 2005.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Randall W. Schroer, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director